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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,394	08/01/2003	Michael V. Pavlov	COBR-10042	2919
23123	7590	12/17/2004	EXAMINER	
SCHMEISER OLSEN & WATTS 18 E UNIVERSITY DRIVE SUITE # 101 MESA, AZ 85201			GARCIA, ERNESTO	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,394

Applicant(s)

PAVLOV, MICHAEL V.

Examiner

Ernesto Garcia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,5,9,12,16,36 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,5,9,12,16,36 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

The terminal disclaimer filed on October 12, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the U.S. patent, 6,601,830 has been reviewed and is NOT accepted.

The person who signed the terminal disclaimer is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c). Furthermore, the Associate Power of Attorney filed on October 12, 2004 is no longer applicable as the practiced has been eliminated.

Claim Objections

Claims 3, 5, 9, 12, 16, 36 and 37 are objected to because of the following informalities:

regarding claims 3, 5, 9, 12, 16, 36 and 37, the status identifier "Previously amended" in line 1 is not an option under CFR 1.121 and therefore should read -- Previously presented--; and,

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regarding claims 3, 5, 9, 12, 16, a claim in dependent form shall contain a reference to a claim previously set forth. Claims 36 and 37, of which claims 3, 5, 9, 12, 16 depend from, are not previously set forth. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 36, 3, 5, 37, 9, 12, and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,601,830 in view of Cochrane, British patent GB-2,337,279.

Regarding claim 36, in claims 1 and 10 of U.S. patent 6,601,830, they each lack the limitation "said channel does not receive a reinforcing wire". Cochrane teaches, on page 3 in lines 26-27, a barrier structure without a reinforcing wire thus the channel

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does not receive a reinforcing wire. Cochrane states that the invention is intended to cover the barrier structure without receiving a reinforcing wire in the channel such that the barrier structure is optional. Therefore, as taught by Cochrane, it would have been obvious to one of ordinary skill in the art at the time the invention was made to not receive a reinforcing wire in the channel as an option to the barrier structure.

Regarding claim 3, this claim is obvious over claims 1 and 5, as claim 5 teaches arcuate cutouts in the second region.

Regarding claim 5, Cochrane teaches the metal tape having a plurality of first regions, second regions, and third regions and a distance between the barb points of the barbs is equal to a distance between adjacent ones of the second regions of the tape.

Regarding claim 37, applicant has admitted in the remarks, filed on 5/3/04 on page 12 in the second paragraph, that claim 37 is identical to claim 1 of the patent, 6,601,830 except without the limitation in the last line. Cochrane discloses, in Figure 3, the channel describing an arc extending between the flanges, which the arc extends less or equal to approximately 180 degrees.

Regarding claim 9, Cochrane also teaches a width of each of the flanges in each first region is greater than a width of each of the flanges in each second region. A width

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of each of the flanges in each third region is greater than a width of each of the flanges in each second region.

Regarding claim 12, Cochrane also teaches a width of each of the flanges in each second region is equal to a width of each of the flanges in each third region.

Regarding claim 16, Cochrane teaches the continuous piece of elongated metal tape having first regions, second regions, and third regions; and a distance between the barb points of the pair of barbs is approximately the same as the distance between adjacent ones of the second regions of the tape.

Response to Arguments

Applicant's arguments with respect to claims 3, 5, 9, 12, 16, 36 and 37 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 703-308-8606. The examiner can normally be reached from 9:30-6:00. The fax phone numbers

for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.P.

E.G.

December 8, 2004



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600